

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Single Member 3 B3]**

Appeal No.: ST/42107/2018

[Arising out of Order-in-Appeal No. 316/2018 (CTA-I)
dated 25.06.2018 passed by the Commissioner of G.S.T. &
Central Excise (Appeals-I), Chennai]

M/s. Kumanan Enterprises, : **Appellant**
No. III-A, Madukarai Main Road,
Karikalampakkam,
Puducherry – 605 107

Versus

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Puducherry Commissionerate

Appearance:-

Shri. G. Natarajan, Advocate
for the Appellant

Shri. L. Nandakumar, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **17.12.2018**

Final Order No. 43128 / 2018

This appeal has been filed by the assessee against the Order-in-Appeal No. 316/2018 (CTA-I) dated 25.06.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), Chennai. The dispute relates to the period from 2013-14 to 2014-15.

2.1 Briefly stated, the appellant is a proprietor concern and is engaged in providing taxable service under the category of “Works Contract Service and Maintenance or Repair Service” and is a holder of Service Tax Registration. On intelligence that the appellant had undertaken Works Contract Services and Maintenance or Repair Services but had not discharged service tax liability for the same, necessary documents were called for from the appellants. Thereafter, the appellant had provided copies of Income Tax Returns, balance sheets, Form26AS and Sales Invoices for the financial years 2012-13 to 2014-15 and scrutiny of the above documents revealed that the assessee had short paid service tax to the extent of Rs. 8,93,511/-.

2.2 Accordingly, a Show Cause Notice dated 26.12.2016 was issued to the appellant proposing to demand the service tax along with interest under proviso to Section 73(1)/Section 75 of the Finance Act, 1994 and penalty under Sections 77 & 78 ibid while appropriating the amount of service tax already paid by them. After due process of law, the adjudicating authority vide Order-in-Original dated 31.03.2017 confirmed the proposals made in the Show Cause Notice.

2.3 On appeal filed against the Order-in-Original, the Commissioner of G.S.T. & Central Excise (Appeals-I), Chennai vide impugned Order-in-Appeal dated 25.06.2018, however, dismissed the appeal as time-barred without going into the merits since according to him, the Order-in-Original was dispatched by Courier service and received by the appellants on 13.04.2017; the appeal having been filed only on 29.05.2018 with a delay of more than a year was clearly belated.

3.1 Today when the matter was taken up for hearing, Ld. Advocate Shri. G. Natarajan appearing for the assessee/appellant pointed out that the delivery run sheet relied on by Revenue has the consignee's name as "Kumaran" which appears to have been collected by a person whose identity is not known; that the appellant being a proprietorship concern run in the name of M/s. "Kumanan" Enterprises, should have been properly served on the proprietor himself, etc. In this regard, he has relied on the following judgements to point out that the delivery when not in accordance with law, cannot be said to be a proper communication :

- *Saral Wire Craft Pvt. Ltd. Vs. Commr. of Cus., C.Ex. & Service Tax – 2015 (322) E.L.T. 192 (S.C.);*
- *Apotex Research Pvt. Ltd. Vs. Union of India – 2017 (347) E.L.T. 426 (Kar.);*

- *M/s. Icon Hospitality Pvt. Ltd. Vs. Union of India & Ors. – 2018-TIOL-1552-HC-KAR-ST;*

3.2 He further submits that since the appellant has only challenged equal penalty, he is willing to appear before the first appellate authority to get an Order on merits.

4. *Per contra*, Ld. AC (AR) Shri. L. Nandakumar appearing for the Revenue supported the findings of the lower authorities.

5. I have considered the rival contentions, perused the documents placed on record and have also gone through the judgements relied on by the Ld. Advocate.

6. The Hon'ble Supreme Court in the case of *Saral Wire Craft Pvt. Ltd. (supra)* with regard to the service of decisions, orders, summons, etc., has laid the law as under :

“ 9. It is an anathema in law to decide a matter without due notice to the concerned party. Every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. The appellant justifiably submits that it was statutorily impermissible for the respondents to serve the adjudication order on a “kitchen boy”, who is not even a middle level officer and certainly not an authorized agent of the appellant. The version of the appellant that it learnt of the passing of the adjudication order dated 30-3-2012 only when, in the course of the recovery proceedings, the Department's officials had visited its unit, is certainly believable. The fact that, firstly, the order had not been passed in the presence of the appellant, so as to render its subsequent service a formality, and secondly, that the order came to be passed after an inordinate period of eight months should not have been ignored. This fact should not have been lost sight of by the authorities below as it has inevitably led to a miscarriage of justice. The Inspector of the Department should have meticulously followed and obeyed the mandate of the statute and tendered the Adjudication Order either on the party on whom it was intended or on its

authorized agent and on one else. It is not the respondents' case that Shri Sanjay was the authorized agent. Even before us, despite several opportunities given, the respondents have failed to file their response to the Special Leave Petitions so as to controvert the asseveration of the appellant that Shri Sanjay on whom the decision was tendered was a mere daily wager 'kitchen boy' and that the appellant had no knowledge of the passing of the adjudication order. We are also informed that the recoveries envisaged in the Adjudication Order have already been effected.

10. *It is in these circumstances that we are of the clear conclusion that a miscarriage of justice has taken place, in that the Authorities/Courts below have failed to notice the specific language of Section 37C(a) of the Act which requires that an order must be tendered on the concerned person or his authorized agent, in other words, on no other person, to ensure efficaciousness. We must immediately recall the decision in Taylor v. Taylor - (1875) 1 Ch. D 426, rendered venerable by virtue of its jural acceptance and applicable for over a century. It was approved by the Privy Council in Nazir Ahmad v. King Emperor - (1935-36) 63 IA 372 and was subsequently applied in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh - AIR 1954 SC 322, State of UP v. Singhara Singh - AIR 1964 SC 358, Babu Verghese v. Bar Council of Kerala - (1999) 3 SCC 422 and more recently in Hussein Ghadially v. State of Gujarat - (2014) 8 SCC 425. As observed by this Court in Babu Verghese, "it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all." The Inspector who ostensibly served the copy of the order should have known the requirements of the statute and therefore, should have insisted on an acknowledgement either by the appellant or by its authorized agent. The Inspector had a statutory function to fulfil, not a mere perfunctory one. The appeals are accordingly allowed and the impugned orders are set aside. In the facts obtaining before us, the computation of the period would commence at least from the date on which the appellant asserts knowledge of its existence, i.e., on 26-7-2012. So computed, the appeal filed before the Commissioner (Appeals) on 22-8-2012 would be within the prescribed period of 60 days and should, therefore, have been entertained on merits. It is ordered accordingly. The appellant shall appear before the Commissioner (Appeals) on the forenoon of 3-8-2015. The appeal shall then be taken up and heard on its merits. There shall be no order as to costs."*

Similar is the case on hand : the identity of the receiver is not known nor is it clear whether the signatory is the authorized agent of the appellant or not.

7. I am therefore of the considered opinion that the appellant has made out a case, the explanation for delay appears to be *bona fide*

and not suspected by the first appellate authority as well and hence the same is accepted. Accordingly, the impugned Order is set aside and the matter is remanded to the file of the first appellate authority. The first appellate authority shall take up the matter and decide on merits without going into the delay.

8. The appeal is allowed for statistical purposes on the above terms.

(Operative part of the order was pronounced in open court)

(P. Dinesha)
Member (Judicial)

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